

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ZAHOOR SIDDIQUI, §
§
Plaintiff, §
§
v. § CIVIL ACTION NO. H-11-631
§
McHENRY MECHANICAL & ENERGY §
MANAGEMENT, INC., *et al.*, §
§
Defendants. §

MEMORANDUM AND ORDER

This is an unpaid overtime case filed by an individual under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* The plaintiff worked for McHenry Mechanical & Energy Management for a short period — apparently 18 days — and claims that he is owed 9.50 hours of unpaid overtime. In their answer, the defendants moved to “dismiss this case as violative of the spirit and letter of Rule 11 of the Federal Rules of Civil Procedure,” because the plaintiff did not make a written pre-litigation demand for the resolution of this matter” and his counsel conducted “no pre-litigation effort to ascertain the truth[] of the allegation” of unpaid overtime. (Docket Entry No. 7, at 3). “If Plaintiff’s attorney had made a written demand or called Defendants to request a resolution for a dispute of less than \$600,” the defendants argue, “there would have been no need for a federal case being made out of this very small claim.” (*Id.*). The defendants stipulate that the plaintiff is owed \$597.00 and offer judgment in that amount to “avoid unnecessary accumulation of costs and expenses on both sides.” *See* FED. R. CIV. P. 68. Siddiqui responds that the defendants have not shown that dismissal under Rule 11 is appropriate, pointing out that the motion did not address all the components of statutory damages or fees.

The defendants' Rule 11 motion cannot be granted. First, there is no indication that the defendants complied with Rule 11's "safe harbor" provision. *See FED. R. CIV. P. 11(c)(2).* The motion, which cites no authority, does not provide a basis to sanction the plaintiff for suing over a relatively small amount or for refusing to a pre-filing settlement. *See FED. R. CIV. P. 11, Advisory Committee Notes, 1993 Amendment* (warning against using Rule 11 as a tool "to emphasize the merits of a party's position"). Although the motion to dismiss is denied, the court is mindful of the small amount of overtime compensation allegedly unpaid and the importance of avoiding unnecessary and disproportionate expenses and fees. The Rule 68 offer of judgment is also a factor. Because this case involves relatively small amounts, the parties need not spend the time and effort on initial disclosures and need not hold a Rule 26(f) conference. At the August 26, 2011 Rule 16 Conference, the court will set a very efficient schedule with discovery limits that are proportionate to what the case involves.

SIGNED on July 18, 2011, at Houston, Texas.



Lee H. Rosenthal
United States District Judge